IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.326 OF 2005

Sudhakar Damodardas Raythattha ... Petitioner

V/s.

Dilip Devji Ganatra & Ors. ... Respondents

Mr.N.V. Walawalkar with N.Engineer i/b L.S. Jain for Petitioner

Mr.S. Thakkar for Respondent Nos.1 and 2

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **AUGUST 16, 2005**

P.C.:

. The Petition challenges the order of the trial Court and the Appellate Court passed on the injunction notice moved by the Petitioner in the suit filed by him. The suit has been filed for ejectment of respondent No.1 on the ground of nuisance committed by him i.e., under section 13(1)(c) as well as under section 13(1)(b) of the Bombay Rent Act. By way of the injunction notice, the Petitioner prayed that the defendant be restrained from carrying on the business of pesticides in the name and style of Pesticon, Pesticide & Insecticide Services from the suit premises at Kandivli (West), Mumbai. According to the Petitioner, the plaintiff in the suit,

respondent No.1 was storing pesticides as well as manufacturing the same in the suit premises. Respondent No.1 was thus storing hazardous chemicals and inflammable material in the suit premises which was dangerous for the well being of the other residents in the building. Poisonous chemicals, kerosene and pesticides were creating not only fire hazards but also health hazards on account of the noxious fumes emanating from those chemicals. The residents of the building were also faced with bronchial problems due to these fumes which cause irritation of the eyes as well.

2. This notice was opposed by respondent No.1 by contending that he was using only a small area in his flat in order to distribute the pesticides to his suburban customers. The main business of respondent No.1 was being conducted in an establishment at Fort, Mumbai.

3. It appears that in 1992, the Petitioner acquired 50% of the undivided share of the right, title and interest of Respondent No.8 in the property known as Krishna Kunj Bhuvan comprising of two buildings. The co-owner entitled to 50% of the share filed a suit being Suit No.38 of 1993 before this Court, for a declaration

that the conveyance in favour of the Petitioner was void. On 26.4.1993, this Court appointed the Court Receiver for collection of rent and payment of outgoings. The Court Receiver did not take any action. The Petitioner complained to the Court Receiver that Respondent No.1 was storing insecticides and manufacturing the same in the suit premises. The Court Receiver took no action against Respondent No.1 and hence, the Petitioner moved Notice of Motion No.2990 of 1998 for appointment of a Court Commissioner and for directions against the Court Receiver to take action against Respondent No.1. The Commissioner was appointed and he has submitted a report indicating the nature of the business being conducted in the suit premises. This report was produced before the Small Causes Court alongwith injunction notice. Respondent No.1 has not controverted the Commissioner’s report but instead has contended in his reply that only a small quantity of the pesticides were stored in his flat and, therefore, resisted the injunction notice.

4. The trial Court heard the parties and dismissed the notice as the respondent had been conducting the business for over a long number of years in the suit premises. An appeal was preferred from this order. The

Appellate Court has also dismissed the injunction notice. Both the Courts were of the view that it would not be equitable to grant any injunction in favour of the Petitioner in view of the fact that the Respondent had been conducting the business with written permission from the original Defendant No.3, i.e., the original landlady, right from 25.12.1984. Both these judgements have been challenged by the Petitioner in this Writ Petition.

5. Mr.Walawalkar, learned Counsel appearing for the Petitioner, submits that the observations made by the appellate Court and the trial Court that it was necessary for the Petitioner to produce on record affidavits of people who were affected from Bronchial problems are wholly unwarranted. He also submits that the observations made by both the Courts that it is for the Municipal Corporation of Greater Mumbai, which is a statutory body, to take action against the Respondent for the type of nuisance alleged and not for the Petitioner to do so. The Courts have found that the Petitioner had not established that the work which Respondent No.1 was performing was hazardous or dangerous or a nuisance to either the Petitioner or to the neighbours occupying the other flats in the

building.

6. Respondent No.1 has admitted that he has been storing pesticides, kerosene and other chemicals and inflammable material in the suit premises, albeit in an area which is only 3'X3'. The Respondent contends that he has, therefore, not changed the user of the flat since it is pre-dominantly used as a residence. Furthermore, it is submitted that the pesticides are diluted with solvents in order to provide the pest control service as and when desired by their suburban customers. According to the Respondent, no licence is required for such pest control operators in view of the letter issued by the Ministry of Agriculture, Government of India.

7. In my view, both the Courts below have misread the provisions of section 13(1)(c). Section 13(1)(c) reads thus:

> 13(1)(c). that the tenant or any person residing with the tenant has been guilty of conduct which is a nuisance or annoyance to the adjoining or neighbouring occupiers, or has been convicted of using the premises or allowing the premises to be used for immoral or illegal purposes; or that the tenant has in respect of the premises been convicted of an offence of

> contravention of any provision of clause 9a) of sub-section (1) of section 394 or of section 394-A of the Bombay Municipal Corporation Act;

8. The Petitioner's case is not that respondent No.1 has changed the user of the flat, but that he is storing material which causes nuisance and annoyance to the adjoining or neighbouring occupiers. Admittedly, the respondent is storing hazardous material including pesticides. However, according to the respondent, he is not manufacturing the insecticides in the suit premises but merely mixing kerosene or diluting insecticides for their use. Section 3(j) of the Insecticides Act, 1968 defines the word "manufacture" to mean - "(i) any process or part of a process for making, altering, finishing, packing, labelling, breaking up or otherwise treating or adopting any insecticide with a view to its sale distribution or use but does not include the packing or breaking up of any insecticide in the ordinary course of retail business; and (ii) any process by which a preparation containing an insecticide, is formulated.

9. Therefore, there can be no dispute that the respondent is manufacturing the insecticides by adapting or treating he insecticides with a view to sell them or

distribute them or use them. The trial Court as well as the appellate Court have refused the injunction on account of the premises having been used in the same manner even prior to the Petitioner having acquired ownership. In my view, merely because the erstwhile owner did not object to the nuisance created by Respondent No.1 although he was committing a breach of law by storing such material and manufacturing insecticides in residential premises. This conduct would not necessarily bind the Petitioner. There can be no doubt that manufacture of insecticides and storing of hazardous and inflammable material in the suit premises would not only cause nuisance to the occupants of the neighbouring residential flats but also endanger their lives. In such circumstances, in my view, it would be appropriate to grant an injunction as prayed for. Injunction Notice is, therefore, made absolute. Petition is disposed off accordingly.

10. The advocate for the Petitioner seeks a stay of this order for four weeks on the ground that the respondent has been carrying on his business in the premises for a long period. The order is stayed for four weeks from today.